



Paper No. 5

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In re Application of  
Wang, *et al.*  
Application No. 10/005,465  
Filed: December 3, 2001  
Attorney Docket No. SMAR-019

OFFICE OF PETITIONS  
DECISION GRANTING  
PETITION

This is a decision on the April 23, 2002 petition requesting that the above-identified application be treated as though it were filed with drawings on December 3, 2001 and that December 3, 2001 be treated as the filing date of this application.

The United States Patent and Trademark Office (hereinafter "USPTO") received this application on December 3, 2001. However, on March 21, 2002, the Office of Initial Patent Examination (hereinafter "OIPE") mailed a "Notice Of Incomplete Nonprovisional Application" (hereinafter "notice") noting that the application had not been granted a filing date due to Applicant's failure to include the drawings required under 35 U.S.C. 113. The notice further stated that the filing date would be the date of receipt of the omitted specification unless a petition was filed that successfully showed that the missing item(s) had been included with the application.<sup>1</sup>

Petitioner timely responded with the April 23, 2002 filing of this petition. The petition alleges that no drawings are needed, as one or more claims are for a method or process. Petitioner requests that the application, without drawings, be accorded a filing date of December 3, 2001.

It is USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. §113 (first sentence).<sup>2</sup> A review of the record reveals that claims 1-28 are method claims. Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention. Accordingly, the application, as filed, is entitled to a filing date.

In view of the above, it is concluded that the complete application was filed on December 3, 2001. Accordingly, *this petition is **granted***.

The March 21, 2002 "Notice of Incomplete Nonprovisional Application" was sent in error and is hereby vacated.

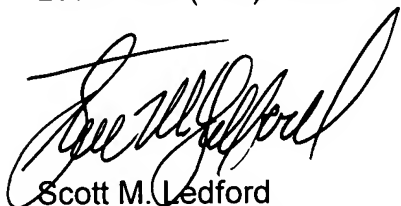
The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of December 3, 2001.

<sup>1</sup> The notice also noted that the basic statutory filing fee was missing, as were additional claim fees and the oath or declaration.

<sup>2</sup> MPEP 601.01(f).

The \$130.00 petition fee paid with this petition was unnecessary. Accordingly, the fee will be refunded to Petitioner's deposit account (da#50-0815).

Any questions regarding this decision should be directed to Petitions Attorney Scott M. Ledford at (703) 306-5593.



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